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Supreme Court of the United States

OCTOBER TERM, 1965

No. 1061

LUCILLE E. MORAN,
PETITIONER,

v.

WILLIAM F. BENCH, *et al.*,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

LUCILLE E. MORAN
Petitioner, Pro se

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Supreme Court of the United States

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No.

LUCILLE E. MORAN,

PETITIONER,

v.

WILLIAM F. BENCH, *et al.*,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause on December 1, 1965.

Opinions Below

The opinion of the United States District Court for the District of Massachusetts dismissing the petitioner's cause, set out at (R. 124) is unreported. The affirming opinion of the Court of Appeals for the First Circuit, appended hereto as Appendix A, is reported in 353 F.2d 193.

Jurisdiction

The judgment of the Court of Appeals was made and entered on December 1, 1965. Jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1); 28 U. S. C. 2101 (c) and 42 U. S. C. 1984, (Appendix E).

Questions Presented

This suit, one of several companion actions brought under Civil Rights Acts, 28 U. S. C. 1343; 42 U. S. C. 1983 and 1985 for deprivation of rights secured under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution was dismissed by the district court on respondents' motions. Each respondent had filed an answer conformably to Rule 12(a) of the Federal Rules of Civil Procedure. (R. 2, 9, 13, 14). Thereafter the petitioner filed a motion in the district court for permission to join this action with companion actions, involving other State officials. (Appendix C). Subsequent thereto, motions for summary judgment under Rule 56 FRCP were entered in behalf of each respondent herein, setting forth as grounds, defenses more usual to motions to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure. (R. 15, 31, 34). The district court separately dismissed this suit while retaining jurisdiction in companion actions against other state officials who had moved for dismissal under Rule 12(b) FRCP before filing an answer under Rule 12(a). (Appendix C) (R. 124).

The court of appeals affirmed the lower court's dismissal of this action. The court of appeals was deprived the occasion of viewing the several companion actions as an integrated whole; because the district court failed to join this case in consolidation, while separately retaining

jurisdiction for trial, of defendants in collateral actions, where dismissal had been sought and denied on the same grounds. The questions presented are:

I. Whether the petitioner stated a cause of action in her complaint for deprivation of rights secured to her by the Constitution and laws of the United States, under provisions of 28 U. S. C. 1343 and 42 U. S. C. 1983 and 1985. (R. 3)

II. Whether the petitioner raised genuine issues of facts in dispute in affidavit opposing respondents' motions for Summary Judgment. (R. 43)

III. Whether grounds more usual to a Motion to Dismiss under Rule 12(b) of the Federal Rules of Civil Procedure may thereafter be used in a Motion for Summary Judgment under Rule 56 FRCP, where movants forfeited their right to defenses through a Motion to Dismiss specified under Rule 12(b), by filing an answer under Rule 12(a) of the Federal Rules of Civil Procedure. (Appendix E) (R. 1, 9, 13, 14)

IV. Whether statutes of limitations for State Tort suits are applicable to cases brought under the Federal Civil Rights Acts:

a. Where there are no standing State laws providing against deprivation of Federally secured Civil Rights.

b. Where the petitioner was banished from courts as a legitimate party or litigant for over Three (3) years by classifying her a persona non grata, under color of State law; and unable to take independent action therefore.

c. Where the statutes of limitation for Tort suits in State courts is Two (2) years.

d. Where the petitioner filed actions under the Federal Civil Rights Acts in the United States District Court for Massachusetts within Two (2) years of the last date of enforcement of deprivations claimed against.

Constitutional Provisions, Statutes, and Rules Involved

Pertinent portions of the Fourteenth Amendment to the United States Constitution; the Civil Rights Acts, 28 U. S. C. 1343; 42 U. S. C. 1983, 1984 and 1985; Federal Rules of Civil Procedure, Rule 12(a) and (b); and Massachusetts General Laws, Chapter 90, section 22, are set forth in Appendices D & E.

Statement

This suit brought under the Civil Rights Acts against State officials, is one of several companion actions entered in the District Court under provision of 28 U. S. C. 1343 and 42 U. S. C. 1983 and 1985. Through a series of extrinsic frauds carried out under color of the laws, authority and processes of the State of Massachusetts, the petitioner was deprived her Fourteenth Amendment rights to due process of law and equal protection of the laws. The District Court consolidated several of the companion actions, excepting from such consolidation, actions against uniformed Town, Municipal and County officials, and the instant cause against State officers. The District Court dismissed the aforesaid consolidated case, and subsequently the instant cause on pre-trial motions; but refused to dismiss companion cases against the uniformed Town, Municipal and County officers, who moved for dismissal on the same grounds. The District Court had original

jurisdiction in this case, as it did in companion actions pursuant to provisions of 28 U. S. C. 1343. (Appendix E)

Suit was filed against officials of the Massachusetts Registry of Motor Vehicles on December 4, 1964. (R. 1, 3)

On January 25, 1965, each defendant filed an answer. (R. 1, 9, 13, 14), under the provisions of Rule 12(a) FRCP (Appendix E)

On January 27, 1965, the plaintiff, who is the petitioner herein moved for permission to join this cause in consolidation with companion actions. (R. 2, 15) (Appendix C)

On February 5, 1965, respondent Lawton filed a motion for summary judgment with affidavit. On February 18, 1965, respondent Riley filed a motion for summary judgment with affidavit; and on the same date, respondent Bench also filed a motion for summary judgment with attached affidavit. (R. 2, 15, 31, 34)

On March 15, 1965, the petitioner filed an opposing affidavit. (R. 2, 43)

On March 16, 1965, a hearing on motions was held in the District Court. The petitioner's cause was dismissed on the District Court's granting of respondents' motions for summary judgment. (R. 121)

On March 19, 1965 the District Court entered an Order of Dismissal, (R. 124) disclaiming jurisdiction under 28 U. S. C. 1343 and denying that the petitioner had asserted a violation of a fundamental right guaranteed under the United States Constitution.

On appeal, the First Circuit Court of Appeals affirmed. The court dealt with what it conceived to be the gravamen of the complaint, and over-looked the main issue of the complaint and overt acts in support thereof, set forth in petitioner's affidavit with attached papers. (Appendix A)

Reasons for Granting the Writ

The decision below should be reviewed because section 1984 of Title 42 of the United States Code requires review by this Court of all cases brought under section 1983 of Title 42, (Appendix E); and for the further reasons that the decision below is in conflict with decisions in *Monroe* v. *Pape,* 365 U. S. 167; *Cooper* v. *Pate,* 378 U.S. 546, and *McNeese* v. *Board of Education for Community Unit School District 187, Cahokie, Illinois,* 373 U.S. 668, and prior cases brought under provisions of 42 U. S. C. 1983, in each this court took review jurisdiction by certiorari. And, further, because the opinion below is in conflict with decisions of other Courts of Appeal and has erroneously interpreted the issues.

1. The petitioner cites 42 U. S. C. 1984 for the purpose of invoking this court's review jurisdiction, as a matter of her right:

Title 42, United States Code, section 1984, at page 8021, entitled, "SAME, REVIEW OF PROCEEDINGS", reads as follows:

> "All cases arising under the provisions of this act in the courts of the United States *shall be reviewable* by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court. Mar. 1, 1875, ch. 114, Section 5, 18 Stat. 337.
>
> "REFERENCES IN TEXT
>
> "This act, referred to in the text, has reference to act Mar. 1, 1875. Sections 1 and 2 of said act Mar. 1, 1875 were not classified to this Code. Sections 3

and 4 of said act Mar. 1, 1875 formerly classified to sections 44 and 45 of Title 8, were repealed by act June 25, 1948, ch. 645, section 21, 62 Stat. 862, and are now covered by sections 243 and 3231 of Title 18, Crimes and Criminal Procedures. *Section 5 of act Mar. 1, 1875 is classified to this section.*" (Appendix E) (Emphasis added)

Petitioners in other causes brought under Title 42, United States Code 1983, "CIVIL ACTION FOR DEPRIVATION OF RIGHTS" (Appendix E), have chosen to seek review by this court on the theory that the United States Supreme Court took jurisdiction in Civil Rights cases on a basis of its discretion. This petitioner suggests that the exercise of discretions in Civil Rights cases, is the very element of discrimination which the Forty-third Congress intended to thwart by coupling section 1984 with section 1983 of Title 42 of the United States Code. The quality of discretion tends to conjure unwarranted selectivity and prejudgment; and ultimately becomes a sluice where causes are separated on a basis of personalities and ideas currently in vogue, or favor. Thus, the Forty-third Congress insured against the Rule of Law design intrinsically knit into the Constitution and Laws of the United States, being plucked from the fabric and used for embroidery.

The petitioner in this cause does not seek review by this Court on a basis of its discretion. The petitioner herein expects review conformably to the Law, set forth as section 1984 of Title 42, which has been classified to section 1983 of Title 42, because it is her right.

In its preamble to the Act of March 1, 1875, the Forty-third Congress re-iterated with exceeding clarity the spirit and intent of Law; conscientious, even-handed justice; and orderly Constitutional government, in the following language:

"Whereas, it is essential to just government we recognize the equality of all men before the law; and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law; Therefore . . . . . ."

Any rule of human conduct which would advocate evasion of conscientious duty and equal responsibility to all men on a basis of discretions, is not Rule of Law: It is the ingredients of the institutions of self-absolution and indulgence. Congress never sowed the rows of justice with any seed that could be reaped as transparent errors of discrimination.

The doctrine of the equality of all men before the law, to enable protection of each in his rights, without favor or prejudgment is not amenable to a policy of hasty discretions. No government can secure and enforce a purpose of "equal and exact justice to all" except through its Courts. To grant use of Courts to some, and to deny usage to others similarly protesting deprivations of rights, privileges and immunities secured by the Constitution and laws, is to place any persons so denied outside the protection of the law by excommunication: An anachronism of silence repugnant to the historical liberties intended by the First Constitutional Amendment; an affront to the dignity of respectable people whose ancestors weathered historical storms to repudiate the institutions of error and asymmetry which brought men to their knees as supplicants dependent on the favor of other mortals to grant them what are by nature their rights.

It was fitting that the Forty-third Congress should enact legislation on March 1, 1875, to make the great principles

of the Thirteenth and Fourteenth Constitutional Amendments and laws arising therefrom, enforceable, "equally and exactly for all" by requiring Supreme Court review, as in now classified to Civil actions for deprivation of Rights. The Forty-third Congress, more proximal in time to the writing of the Constitution, comprehended the proposition that Rule of Law supercedes rules made for the convenience of men, when the gravamen of a complaint concerns the Constitutional rights, privileges and immunities of the aggrieved.

The Congress of 1875 took its authority from the people who had ratified the Fourteenth Amendment to the United States Constitution, The Congress could exercise no discretion, because the people made clear that its purposes should be enforced by law, under the terms of Section 5 of the amendment:

> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

2. Although this Court is by law obliged to review all cases arising in the Federal courts under provisions of section 1983, Title 42 of the United States Code, (App.); standing alone, the factors of symmetry and sound judicial judgment are sufficient to warrant review, because the opinion of the court below is in conflict with this court's opinions in *Monroe* v. *Pape,* 365 U.S. 167; *Cooper* v. *Pate,* 378 U.S. 564; and *McNeese* v. *Board of Education for Community Unit School District 187, Cahokia, Illinois,* 373 U.S. 668.

Each of the foregoing cases was brought under provisions of 42 U. S. C. 1983, "CIVIL ACTIONS FOR DEPRIVATION OF RIGHTS", each was dismissed in lower courts, and in each this Court granted review by certiorari, at its discretion; because in each, the movants refrained peti-

tioning for review by this Court under 42 U. S. C. 1984, "SAME, REVIEW OF PROCEEDINGS", as a matter of their right.

In determining that the petitioner had not shown in her pleadings conduct sufficient to sustain a cause of action under the Civil Rights Acts, the court below displayed a seeming naivete of points of law; an uncertain grasp of Fourteenth Amendment Rights and statutes making them enforceable through Federal Courts; a lack of comprehension of the actual issues involved; and clearly succumbed to the temptation of performing the function of a Trial court while showing the existence of reasonable doubt by speculating on the merits and issues. Reasonable doubt was first betrayed in the following language from the opinion:

> "However, if defendants employed their official powers for the purpose of injuring the plaintiff, rather than to serve the proper ends of governmental duties, plaintiff might well have a claim under the civil rights statutes. *Cf. Yick Wo* v. *Hopkins,* 1886, 118 U.S. 356 ....." (Appendix A)

To reach and sustain its irresolution, the court below applied several errors and defective premises. Foremost amongst them was a matter of *ignoratio elenchi,* wherein the court below put aside the mainstay of the cause, as being an action for Deprivation of Civil Rights under provisions of section 1983 of Title 42. In lieu thereof, the court below substituted the adjunctive provisions of section 1985 of Title 42 and dealt with the action as being primarily a claim of Criminal conspiracy, instead of a Civil Rights cause with "conspiracy" as a rider. (R. 3, 43) (Appendix A)

By simply shifting the load emphasis to section 1985 of Title 42, "CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS . . . PREVENTING OFFICER FROM PERFORMING DUTIES", and applying standards for a criminal charge rather than those of a civil complaint, the opinion below came into direct conflict with decisions of other Court of Appeals, where cases were brought jointly under the provisions of 42 U. S. C. 1983 with 42 U. S. C. 1985 linked as a legal device. See *Nesmith* v. *Alford,* 318 F2d 110 and *Hoffman* v. *Halden,* 268 F2d 280, 293. The Court of Appeals for the Fifth Circuit and for the Ninth Circuit respectively, sustained the foregoing causes for Deprivation of Civil Rights where conspiracy was likewise alleged.

In her pleadings in the courts below, the petitioner pointed out that activities of respondent State officials in this cause, although conducted under color of state authority, in violation of Section 22, Chapter 90, of the Massachusetts General Laws (Appendix E, were collateral to primary objects of conspiracy to deprive her of her Civil Rights; constituting means of enforcement rather than fixed goals in themselves. (R. 3, 43, 51, 52)

In pursuing its theory that the major complaint in this cause was that of conspiracy, the court below admonished against use of the term "conspiracy", on the one hand:

> "The allegation of conspiracy implied that defendants acted with improper intent . . . . . "

and on the other hand, showed a continuing presence of reasonable doubt, by citing *Hoffman* v. *Halden,* 268 F2d 280, 285; and admonishing:

> "*Courts* must be cautious in labelling allegations of conspiracy as conclusionary . . . . . as well as *in*

> *resolving cases involving conspiracy or states of mind by summary judgment.*" (Emphasis added) (Appendix A)

Therewith, the court below, promptly violated its own admonitions, by upholding the district court's incautious resolving of the petitioner's case in granting summary judgment to respondents, who were called defendants at the district court level. (Appendix A)

It seems the court below arrived at its conclusion by further feats of inconclusiveness and non sequitur, based largely on its belief in a litany of good faith repeated in turn by each respondent in his motion for summary judgment under Rule 56 FRCP. (R. 15, 31, 34).

> "Each defendant's affidavit states precisely, or in substance that at all times material he was acting in good faith ....."(Appendix A)

In justifying its stand in favor of good faith, the court below cautiously avoided reference in its opinion to section 22, Chapter 90 of the General Laws of Massachusetts. (Appendix) (R. 51, 52) And on the shining virtue of respondent's good faith supported its beliefs as follows:

> "Against this plaintiff's affidavit asserts that defendants "conspired." She does not indicate precisely with whom they conspired .....
> "Nevertheless, by the bare use of the word "conspiracy", with no supporting facts that tend to show the existence of an unlawful agreement or prima facie improper behavior, plaintiff has not met the burden of countering affidavits, making explicit denials ....." (Appendix A)

The petitioner deems it unbecoming to engage in arguments of either good or bad faith at the appeal or review level. The ambit of appeal or review courts is points of law and procedure. Establishing guilt or innocence; good or bad faith; is the work and function of a Trial court jury.

The lower court's misunderstanding of "intent" in civil actions for Deprivation of Civil Rights, based primarily on provisions of 42 U.S.C. 1983, was settled by this Court's opinion in *Monroe* v. *Pape,* 365 U.S. 167, at page 187 dispensing the requirement of showing a specific intent:

> "Since 1979 (1983) does not contain the word "wilfully", as does 18 U. S. C. s. 242, and as 1979 (1983) imposes civil liability, rather than criminal sanctions, actions under 1979 can dispense with the requirement of showing a "specific" intent to deprive a person of a federal right . . . . . .
>
> "Section 1979 should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."

The record below shows that respondents were the movants for summary judgment. (R. 1, 15, 31, 34) The petitioner, as plaintiff, answered by opposing affidavit. (R. 43).

In *Hoffman* v. *Halden,* 268 F2d, 280, 299, the court said among other things:

> "But the broad scope of the Civil Rights Act would impose liability on state officers, for acts done under color of law, ------ acts done within, as well as without the scope of their authority.

> Thus it is not enough for such a defendant in a Civil Rights case to say, 'I acted under the law ----- I did what the law required.'
>
> Since these Civil Rights actions lie in the federal courts and defendants are usually state officials, there are involved "delicate state-federal relationships . . ."

It not only is well settled that the burden of proof in motions for summary judgment is on the moving party; but that plaintiff's allegations and pleadings must be construed most favorably for the plaintiff; and that motions for summary judgment do not constitute trial on the merits. *Cooper* v. *Pate,* 378 U.S. 546; *McHenry* v. *Ford Motor Company,* 269 F2d 18; *Hiern* v. *St. Paul-Mercury Indemnity Co.,* 262 F2d 526; *John H. Thompson* v. *United States of America,* 291 F2d 67, 68. See also Barron and Holtzoff, Section 356, "Federal Rules of Procedure."

Dealing with penetrating insight on influences at work where private parties are caused to bring their own Civil Rights complaints in federal courts, the Ninth Circuit Court of Appeals said in *Hoffman* v. *Halden,* at page 295

> "We are aware of the experiences of the trial judges that an astonishing few of the actions for violation of civil rights have any merit when explored and tried on the merits and we sympathise with the desire of the trial judges *to expediently dispose of these cases.* We question some of the broad language used in decisions concerning *"conclusionary allegations."* We think *the validity of the complaint at the pleading stage cannot be disposed of on the basis* of the presence of so-called *"conclusionary"* allegations of *"conspiracy"* or *"conspiring"* or *"discriminatory*

> *intent*" or of "acting under color of law or authority," but as to these elements of a cause of action *such allegations are proper and necessary.* However attention should be directed to the nature of the *overt acts* alleged to determine if a cause of action is stated. This thesis we now explore. . . In a civil conspiracy the conspiracy itself is not a cause of action, without overt acts, because again *it is the overt act which moves the conspiracy* from the area of thought and conversation into actions *and causes the civil injury and the resulting damage.* Accordingly, the cases hold that the damage in a civil conspiracy flows from the overt acts and *not from* the conspiracy." (Emphasis added)

In her pleadings below, the petitioner failed to make vows of good faith, but did set forth a number of overt acts, particularly as they deprived her of the provisions of Section 22, Chapter 90 of the Massachusetts General Laws. (Appendix E) This statute controls procedure whereby the Massachusetts Registrar of Motor Vehicles directly, or through his agents, can make suspensions or revocations of certificates of Registration or Driver's licenses. The manner in which respondents herein deprived the petitioner of her rights under the Fourteenth Amendment are set forth in detail in her opposing affidavit. (R. 43, 51, 52)

Reduced to its naked elements, Section 22, Chapter 90 MGL, sets forth certain steps the Registrar must take in making an official suspension. The purpose is clearly to assure that the Licensee is officially notified a suspension is in effect, the effective date thereof, the reason or grounds for suspension that the Licensee may attack the cause of suspension directly.

They consist of:

(a) Sending written notice thereof to the licensee
(b) Notice to be sent by mail
(c) Notice to be mailed to the last address *as appearing on the registrar's records.*

Having followed these simple rules in appropriate sequence, the statute thereafter provides; "That such notice has been mailed in accordance with this section shall be determined prima facie evidence thereof and shall be admissible in any court of the commonwealth *as to the facts contained therein.*" (Emphasis added) (Appendix E)

In pleadings in the court below, the petitioner set forth the material facts that a copy of the suspension notice and attesting papers were finally secured for the petitioner through lawful but extra-ordinary channels on October 29, 1962, over Two (2) years and eight (8) months after respondents made suspension; because the petitioner never received notice for the obvious reason that respondents did not mail notice to her at the last address as appearing on the registrar's records, but mailed it to someone else's address. (R. 87, 88, 89, 90)

These papers, appended to petitioner's opposing affidavit (R. 87, 88, 89, 90), as stated in Section 22, Chapter 90, MGL, constitute prima facie evidence of the facts contained therein; by showing that respondents herein did deprive the petitioner of her right to due process of law, secured by the Fourteenth Amendment, under color of law controlling the authority of the Massachusetts Registrar of Motor Vehicles.

The court below found no error in the informal manner used by respondents in suspending this petitioner's license; nor anything unusual in the fact that respondents have

neither denied nor refuted petitioner's claim that suspension overtly resulted from a telephone conversation with an unseen caller, who may or may not have identified himself as an official of the Veterans Administration. (R. 85, 87, 88, 89, 90).

Although the court below saw nothing strange in the fact that the same unseen caller requested notice be unlawfully mailed to the home address of Henry A. Moran, Jr., instead of the last address for the petitioner, *as appearing on the registrar's records* (R. 85, 87, 88, 89, 90). It should have at least quieted speculations by the court below as to the identity of the person, "with whom they conspired."

In declaring that "The underlying facts are not in dispute"; the court below must be speaking for itself and respondents, because the petitioner never gave her assent or vote to make the statement unanimous. (Appendix A)

The petitioner has uniformly claimed in all pleadings that every underlying fact, including the so-called "involuntary" committal for allegedly psychiatric reasons to a Veterans Administration hospital, was a fraud conducted under color of state law, for more subtle purposes.

By recapitulating in the second paragraph of its opinion, the events as they occurred, the court below not only shows it found no error in proceedings conducted by telephone, but inadvertently backs up the petitioner's claim that suspension was made under conditions somewhat less than required by the formalities of law; and that such suspension was thereafter perpetuated and enforced by certain clerical remissions and irrelevant and unreasonable ex post facto demands by respondents, in the knowledge that the petitioner had no way of knowing the precise grounds on which suspension had been made, because she had received no notice.

"Early in 1960, defendant Bench a "supervisor" at the Registry received a telephone call from a caller . . . . . ."

The whole case turns on those events which the court below abbreviated and summarized in its vernacular. The issues are not whether or not these events occurred; but how they occurred; and whether in the face of Section 22, Chapter 90, MGL, controlling procedure for suspension, respondents using raw power of the Massachusetts Registry of Motor Vehicles were entitled to ignore its provisions, in making and enforcing a suspension for over Four (4) years.

In the fourth paragraph of its opinion, the court below confirms the petitioner's thesis, that it puts such great store by protests of "good faith", it will disregard points of law and procedure in order to try and decide cases in favor of those pleading "good faith."

"Each defendant's affidavit states precisely, or in substance 'that at all times material he was acting in good faith in carrying out his duties and that this suspension was a routine matter, not handled any differently than any other suspension for the same cause'....." (Appendix A)

Confronted by movants for summary judgment chanting good faith and prescribed ritual in unison; any opposing affidavit setting forth overt acts to demonstrate deprivation of a plaintiff's Civil Rights under color of State Law would be doomed for defeat merely on the grounds of over-whelming sanctity.

3. The petitioner has brought this cause before the Court in her own idiom, because in no other state or territory of the United States is contempt for law and

lawful processes amongst members of the Bar and public officials in each of the Three (3) arms of government more rampant than in the state of Massachusetts. The employees of no other agency of the state of Massachusetts show more clearly the practice of this outlaw phenomena, than those in the Registry of Motor Vehicles. Members of the Bar in private practice or public office make use of this agency to harass and punish their enemies and afford protection as reciprocity for employees who have done them favors. Every private individual who is neither a member of the Bar, nor a public official, who is licensed by the State of Massachusetts, is a potential victim.

In moving for summary judgment ostensibly under Rule 56 of the Federal Rules of Civil Procedure, as aforesaid, each respondent relied upon his protest of good faith and prescribed ritual; and as the court below stated in its opinion, "this suspension was a routine matter, not handled any differently than any other suspension for the same cause." (Appendix A)

On this plenary indulgence hangs the question of what exactly was the "cause" upon which suspension was made; and imputes the momentous and recurring significances of this case.

According to the memorandum written by respondent Bench to respondent Riley (R. 85), the cause would seem to be the telephone call received from the unseen caller; but the actual grounds or reason for making suspension was information transmitted thereby, that the petitioner allegedly had been "committed to that facility on November 7, 1959." (R. 85) This rationale is borne out by the mis-addressed Notice of Suspension (R. 89) which gives as the reason "3B", which decoded (R. 90) reads, "I have reason to believe that you are an incompetent person to operate Motor Vehicles."

Although under the laws of the Commonwealth of Massachusetts, restraint of one's liberty at a Mental Institution, "does not pretend to declare the person committed to the hospital to be incompetent." . . . Leggate v. Clark, 111 Mass. 308. . . . . if any alternative address were permissible, since the grounds were the petitioner's alleged presence at the Bedford V. A. facility, it is only reasonable to expect that conformably to the spirit and intent of section 22, Chapter 90 MGL, respondents would have mailed notice to that place. They got that address in the telephone message. (R. 85)

Respondents to this cause had their dates mixed. A hazard encountered in verbal transactions. The petitioner was not "involuntarily committed" on November 7, 1959 to the United States Veterans' Administration facility at Bedford. (R. 47, 85)

It wasn't until December 10, 1959, that a member of the Massachusetts judiciary usurped the Federal jurisdiction to stage a sham committal hearing under color of state law at the United States Veterans' Administration facility, for record purposes in state courts. (R. 48, 85)

November 7, 1959, was merely the date when Henry A. Moran, Jr., an executor of an estate to which the petitioner was principal heir, was able to railroad the petitioner into the Federal jurisdiction by informal means under color of state law. (R. 47, 85)

Reliance on this "cause", presupposes that any person, accursed with relatives so greedy and vicious they will pay agents to have their victim summarily abducted and imprisoned without charges or hearing; runs the collateral liability of having his license suspended indefinitely (R. 89) because his enemies succeed in bringing off their plan in the first instance.

Pleas of respondents that the manner by which petitioner's license was suspended, "was a routine matter, not

handled any differently than any other suspension", does not automatically import validity or justification. Rather, the fact that there is a modicum of truth in this protest of usualness immediately suggests the far-reaching issues involved herein.

Conclusion

The petitioner respectfully submits this petition for a writ of certiorari be granted, foremostly as a matter of her right, under the provisions of 42 U. S. C. 1984 (Appendix E); and for the other reasons set forth above.

LUCILLE E. MORAN
Petitioner, Pro se

Appendix A

United States Court of Appeals
For the First Circuit

No. 6544.

LUCILLE E. MORAN,
PLAINTIFF, APPELLANT,
v.
WILLIAM F. BENCH ET AL.,
DEFENDANTS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge*, MCENTEE, *Circuit Judge*, and SWEENEY, *District Judge*.

Lucille E. Moran on brief pro se.
Edward W. Brooke, Attorney General, and *Samuel W. Gaffer*, Assistant Attorney General, on brief for appellees.

OPINION OF THE COURT.

December 1, 1965.

ALDRICH, *Chief Judge*. In this action for damages brought under the civil rights statutes, 42 U.S.C. §§1983 and 1985, against certain officials of the Massachusetts Registry of Motor Vehicles the district court granted summary judgment for the defendants. On plaintiff's appeal the sole question is whether her affidavit raises an issue of fact.

The underlying facts are not in dispute. Late in 1959 plaintiff was involuntarily committed, for psychiatric reasons, to a Veterans Administration hospital. Early in 1960, defendant Bench, a "supervisor" at the Registry,

received a telephone call from a caller who appears to have been an official of the V. A. facility, recommending that plaintiff's operator's license be suspended. Bench communicated the recommendation to defendant Riley, then Registrar; the license was suspended, and notice of suspension was sent to plaintiff's brother in Massachusetts. Later in 1960, when plaintiff sought reinstatement of her license, Bench informed her that she must produce a statement showing discharge from the facility, as well as a psychiatrist's certification of competency. These were delivered to Bench, who then notified plaintiff that certain additional documents were necessary. Apparently on the ground that he had lost or had not received the psychiatrist's certificate, Bench demanded this of her again. Plaintiff, claiming that these requirements were improper, did not comply. In 1963 she appealed to the Massachusetts Motor Vehicle Appeal Board, which affirmed the suspension. In 1964, after compliance with some, but apparently not all, of the conditions, the suspension was lifted.

It does not appear that the defendant's acts were beyond their authority, or that their conduct was arbitrary or unreasonable. If they acted in good faith, treating the suspension as a matter of ordinary procedure, even if they might be thought to have been over-demanding, plaintiff has no federal claim. *Cf. Wall* v. *King,* 1 Cir., 1953, 206 F.2d 878, 884, *cert. den.* 346 U.S. 915. However, if defendants employed their official powers for the purpose of injuring the plaintiff, rather than to serve the proper ends of their governmental duties, plaintiff might well have a claim under the civil rights statutes. *Cf. Yick Wo* v. *Hopkins,* 1886, 118 U.S. 356; *People* v. *Walker,* 14 N.Y. 2d 901, 252 N.Y.S. 2d 96 (1964).

Each defendant's affidavit states precisely, or in substance, "that at all times material he was acting in good faith in carrying out his duties and that this suspension

was a routine matter, not handled any differently than any other suspension for the same cause; that he does not know the plaintiff except as a person involved in a 'suspension' matter; that he does not know any of the other persons referred to in the complaint . . . [except the other two defendants]; . . . that at no time did he correspond with any of the other parties relative to this matter or enter into or further any alleged conspiracy to deprive the plaintiff of any of her rights and property; that the matter involving the plaintiff was handled by various employees and officials of the Registry in the usual course of the business of the Registry in accordance with the usual practices and rules of the said Registry . . . ."

Against this plaintiff's affidavit asserts that defendants "conspired." She does not indicate precisely with whom they conspired, nor any facts tending to establish the existence of a conspiracy. The allegation of conspiracy implies that defendants acted with improper intent. See *Frohwerk* v. *United States,* 1919, 249 U.S. 204, 209. Courts must be cautious in labeling allegations of conspiracy as conclusionary, *Hoffman* v. *Halden,* 9 Cir., 1959, 268 F.2d 280, 294, as well as in resolving cases involving conspiracy or states of mind by summary judgment. *Poller* v. *Columbia Broadcasting System,* 1962, 368 U.S. 464; *Subin* v. *Goldsmith,* 2 Cir., 1955, 224 F.2d 753, *cert. den.* 350 U.S. 883. Nevertheless, by the bare use of the word "conspiracy," with no supporting facts that tend to show the existence of an unlawful agreement or prima facie improper behavior, plaintiff has not met the burden of countering affidavits making such explicit denials. *Skolnick* v. *Lefkowitz,* 2 Cir., 1964, 329 F.2d 716, *cert. den.* 379 U.S. 825.

Affirmed.

Appendix B

JUDGMENT

December 1, 1965.

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was submitted on briefs.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

(s) ROGER A. STINCHFIELD
Clerk

[cc. Miss Moran and Mr. Gaffer.]

Appendix C

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

Civil Actions No. 64-690-W
LUCILLE E. MORAN v. JOHN METZLER
Civil Actions No. 64-697-W
LUCILLE E. MORAN v. FRANCIS J. CROWLEY, RAYMOND McGURK
Civil Action No. 64-863-W
LUCILLE E. MORAN v. WILLIAM F. BENCH, CLEMENT A. RILEY, JAMES R. LAWTON

PLAINTIFF'S MOTION FOR PERMISSION TO JOIN

The Plaintiff, Lucille E. Moran, moves the Court as follows:

1. That Civil Actions numbered 64-690-W; 64-697-W; and 64-863-W be joined in consolidation with the several actions consolidated for the record by the Court on December 24, 1964; because the right to relief claimed by the Plaintiff in the above-specified actions arises out of the same transactions and occurrences, and is part of the same series of transactions and occurrences as those already consolidated for the record. That further, the Plaintiff has relied upon the same laws in all actions she has brought before the Court.

THE PLAINTIFF
(s) LUCILLE E. MORAN
LUCILLE E. MORAN, *Pro se*
and Post Office Box 82,
Westfield, Massachusetts

Post office Box 381,
Key West, Florida

Appendix D

Constitutional Provisions Included

United States Constitution, Fourteenth Amendment

"Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Appendix E

Statutory Provisions

United States Code, Section 1343, Title 28 at page 5024

Civil Rights and Elective Franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of any citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

UNITED STATES CODE, Section 1983, Title 42, at page 7062
Civil Action for Deprivation of Rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. s. 1979)

UNITED STATES CODE, SECTION 1984, Title 42, at page 7062
Same, Review of Proceedings:

All cases arising under the provisions of this act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

UNITED STATES CODE, Section 1985, Title 42, at page 7062

(1) *Preventing Officers from Performing Duties.*

If two or more persons in any State or Territory conspire to prevent by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) *Obstructing Justice, Intimidating Party, Witness, or Juror*

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attend or testified, or to influence the verdict, presentment or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) *Depriving Person of Rights or Privileges*

If two or more persons in any State or Territory conspire to go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or, if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward

or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. s. 1980)

FEDERAL RULES OF CIVIL PROCEDURE

Rule 12. DEFENSES AND OBJECTIONS — WHEN AND HOW PRESENTED — BY PLEADING OR MOTION — MOTION FOR JUDGMENT ON PLEADINGS

(a) WHEN PRESENTED. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, unless the court directs otherwise when service of process is made pursuant to Rule 4 (e).....

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party.....

§22. Suspension or Revocation of Certificates of Registration, Licenses, etc. — The registrar may suspend or revoke any certificate of registration or any license issued under this chapter, after due hearing, for any cause which he may deem sufficient, and he may suspend the license of any operator or the certificate of registration of any motorcycle in his discretion and without a hearing, and may order the license or registration certificate to be delivered to him, whenever he has reason to believe that the holder thereof is an improper or incompetent person to operate motor vehicles, or is operating improperly or so as to endanger the public; and neither the certificate of registration nor the license shall be reissued unless, upon examination or investigation, or after a hearing, the registrar determines that the operator should again be permitted to operate. The registrar, under the same conditions and for the same causes, may also suspend the right of any person to operate motor vehicles in the commonwealth under section ten until he shall have received a license from the registrar.

Upon the suspension or revocation of any license or registration the registrar shall forthwith send written notice thereof to the licensee or registrant as the case may be, and such notice, in case of suspension of a license to operate a motor vehicle because of improper operation thereof, shall specify the time and place of such improper operation. Such notice mailed by the registrar or any person authorized by him to the last address as appearing on the registrar's records shall be deemed a sufficient notice and a certificate of the registrar, or of any person so authorized, that such notice has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein.

Upon the suspension of the right to operate a motor vehicle without a license of any person, the registrar shall forthwith send written notice thereof to such person and such notice mailed by the registrar or any person authorized by him to such person, to his last and usual place of abode shall be deemed a sufficient notice and a certificate as described in the preceding paragraph shall be likewise deemed prima facie evidence and shall be admissible in like manner in any court of the commonwealth.